IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

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Plaintiff

v.

Gabriel Cepeda-Ortiz,

Defendant

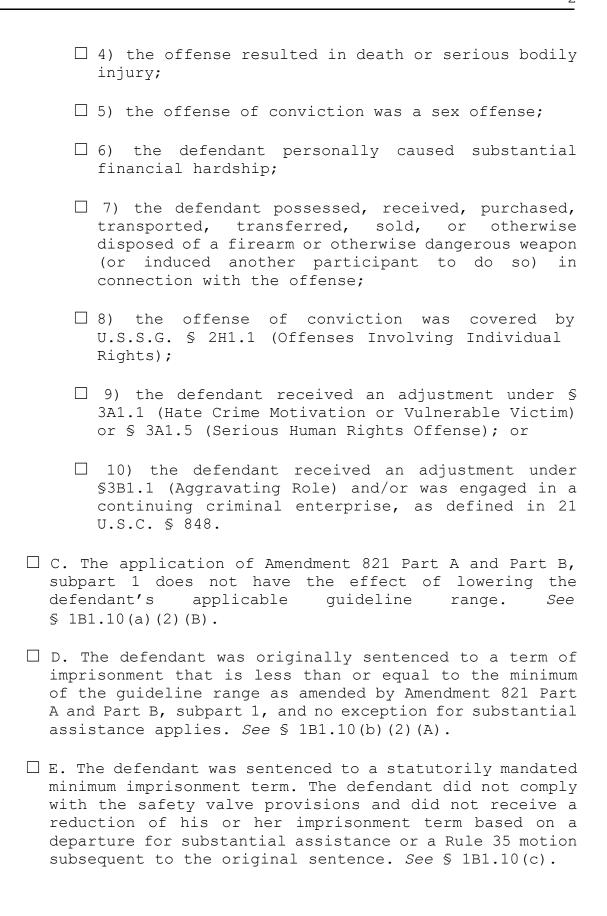
Criminal No. 15-cr-291-1-JAG

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement \S 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

\square The defendant is <u>not</u> eligible for a sentence reduction base on the following factor(s):
☐ A. The guidelines range that applied in the defendant' case was not determined by U.S.S.G. § 4A1.1(d) defendant's status as a zero-point offender under Chapter 4, Part A.
\square B. The defendant does not meet <u>all</u> of condition specified by § 4C1.1. Specifically, one or more of the following criteria applies:
\square 1) the defendant has criminal history points from Chapter Four, Part A;
<pre>D 2) the defendant received an adjustment unde U.S.S.G. § 3A1.4 (Terrorism);</pre>
☐ 3) the defendant used violence or credible threat of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

□ The defendant may be eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons: Defendant pled guilty to carjacking (Count One) and possessing a firearm in connection with that offense (Count Two). Dkt. 93 (Plea Agreement) at 1-2. He received the 84-month mandatory minimum sentence for Count Two. Dkt. 136 (Statement of Reasons) at 1.

As for Count One, Defendant's total offense level was 19. *Id.* He received 10 criminal history points, including 2 for committing the instant offense while under a criminal justice sentence. Dkt. 139 (PSR) at 11 ¶¶ 56-58. Accordingly, he was placed in criminal history category V. *Id.*

Under Amendment 821, Defendant would have received only 1 point for committing this offense while under a criminal justice sentence. He would have thus had 9 criminal history points placing him in criminal history category IV. His guideline range would have then been 46 to 57 months. Defendant is currently serving a 57-month sentence for Count One. He thus may be eligible for a reduction.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 9th day of February, 2024.

<u>s/Bruce J. McGiverin</u> BRUCE J. McGIVERIN